Supreme Court, U.S.
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No. 00-1644

IN THE

Supreme Court of the United States

ALVIN F. LANGFELDT AND MARY LANGFELDT,

Petitioners,

v.

GENESIS MEDICAL CENTER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF IOWA

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT PURSUANT TO RULE 29.6

Genesis Medical Center is a wholly owned subsidiary of Genesis Health System and there is no publicly held company owning 10% or more of the corporation's stock.

TABLE OF CONTENTS

Page

Statement Pursuant to Rule 29.6 i

Table of Contents ii

Table of Authorities iii

Statement of the Case 1

Reasons for Denying the Writ 3

I. Constitutional Arguments were neither Raised nor Argued Below 4

II. This Case does not Involve any Federal Questions Requiring Review from this Court 6

Conclusion 9

TABLE OF AUTHORITIES

Cases:

Adams v. Robertson, 520 U.S. 83, 117 S.Ct. 1028, 137 L.Ed.2d 203 (1997) 5

Alvarez v. Meadow Lane Mall Limited Partnership, 560 N.W.2d 588 (Iowa 1997) 2, 7, 8

Bean v. Midwest Battery & Metal, Inc., 449 N.W.2d 353 (Iowa 1989) 7

Becker v. Becker, 603 N.W.2d 627 (Iowa 1999) 7

Cardinale v. Louisiana, 394 U.S. 437, 89 S.Ct. 1161, 22 L.Ed.2d 398 (1969) 5

Dennis v. Christianson, 482 N.W.2d 448 (Iowa 1992) 7

Henry v. Shober, 566 N.W.2d 190 (Iowa 1997) 7, 8

McCormick v. Meyer, 582 N.W.2d 141 (Iowa 1998) 7

Mokhtarian v. GTE Midwest, Inc., 578 N.W.2d 666 (Iowa 1998) 7, 8

Monks v. New Jersey, 398 U.S. 71, 90 S.Ct. 1563, 26 L.Ed.2d 54 (1970) 5

Roberts v. Underwood, 270 N.E.2d 547 (Ill. App. Ct. 1971) 6

Turnbull v. Horan, 522 N.W.2d 860 (Iowa Ct.App. 1994) 7, 8

U.S. for Use and Benefit of DeLoss v. Kenner Gen. Contractors, Inc., 764 F.2d 707 (9th Cir. 1985) 6

Webb v. Webb, 451 U.S. 493, 101 S. Ct. 1889, 68 L.Ed.2d 392 (1981) 5

Statutes:

28 U.S.C. § 1257 5

Rules:

FED. R. CIV. P. 4(m) 6

Iowa R. CIV. P. 49(f) ..... *passim*

SUP. CT. R. 14 4

SUP. CT. R. 14(g)(i) 4

STATEMENT OF THE CASE

Petitioners' Statement of the Case omits and misstates certain facts that are relevant to this Court's determination whether to issue a Writ of Certiorari. Petitioners are correct that the initial lawsuit against Respondent was dismissed without prejudice. However, Petitioners fail to mention that Respondent was not served with Original Notice of that suit until 117 days after the Petition was filed. Respondent subsequently moved to dismiss the initial lawsuit on the basis of untimely service pursuant to Iowa Rule of Civil Procedure 49. The District Court denied this first motion.

Petitioners also correctly point out that in a letter to Petitioners' counsel, dated January 29, 1999, Respondent's counsel did acknowledge receipt of the second Petition. However, Petitioners fail to mention that in that same letter, Respondent's counsel stated that "[u]ntil [he is] informed by Genesis that they have been served, obviously [he] will not be filing an answer."

Petitioners state the Respondent did not raise Iowa Rule of Civil Procedure 49(f), and its service requirements, until after mediation efforts regarding the second Petition were unsuccessful. This is quite simply wrong. Petitioners were put on notice of the service requirements of Rule 49(f) by Respondent's motion in the initial lawsuit and counsel's letter of January 29, 1999.

Petitioners further state that Rule 49(f) "directs the court to 'direct an alternate time or manner of service.'"[1] However, Petitioners' statement is wrong and their argument is misguided. Under Rule 49(f), the District Court's authority to direct an alternate time or manner of service is discretionary unless the failure to serve is deemed "presumptively abusive." Petitioners never attempted to effectuate service until 140 days after filing the second Petition; therefore, the District Court and the Iowa Court of Appeals properly concluded the Petitioners' failure to serve was presumptively abusive. Once the delay in service was deemed presumptively abusive, dismissal of the action was required unless Petitioners established adequate justification for the delay. *See Alvarez v. Meadow Lane Mall Limited Partnership*, 560 N.W.2d 588, 590 (Iowa 1997). Petitioners failed to demonstrate such adequate justification. Therefore, once the delay was deemed "presumptively abusive," any discretion allowed the District Court under Rule 49(f) ceased to exist.

Respondent never waived timely service of process and the Petitioners never sought to serve Respondent or sought an extension of this time period to complete service. Petitioners failed to establish adequate justification for their failure to timely effectuate service of process. Therefore, the

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[1] Ironically, Petitioners argued to the Iowa Supreme Court that the District Court's authority to direct an alternate time or manner of service was discretionary, not mandatory as they seem to argue now. *See* Application for Further Review, p. 6 ("Additionally, the District Court, had within it's discretion to direct an alternate time or manner of service pursuant to Iowa Rule of Civil Procedure 49(f).").

District Court properly granted Respondent's Motion to Dismiss because Petitioners "failed to show good cause for their failure to serve defendant in this action as required by amended Rule 49(f)." The Iowa Court of Appeals properly affirmed the dismissal and the Iowa Supreme Court properly declined further review.

REASONS FOR DENYING THE WRIT

Petitioners apparently argue that due process and equal protection rights under the Fourteenth Amendment of the U.S. Constitution require the issuance of a Writ of Certiorari. However, no constitutional issues, including due process and equal protection rights under the Fourteenth Amendment, were ever raised or argued in the Iowa District Court for Scott County, the Iowa Court of Appeals or the Iowa Supreme Court. Therefore, Petitioners' arguments have not been preserved for review and the Petition for Writ of Certiorari should be denied.

Notwithstanding Petitioners' failure to raise any constitutional arguments below, Petitioners have failed to raise any federal questions requiring review by this Court. Iowa Rule of Civil Procedure 49(f) is not in any manner unconstitutional. Petitioners were not denied access to the Iowa courts as they were allowed to file their action not once but twice. It was Petitioners' failure to adhere to the rules of the court that resulted in dismissal; not an arbitrary or capricious application of the rules as Petitioners argue.

When Petitioners filed their action, Iowa Rule of Civil Procedure 49(f) clearly required timely service of process upon Respondent and a failure to effectuate timely service, without "good cause," clearly mandated dismissal of the ac-

tion. Iowa courts had proper jurisdiction over this case and properly dismissed the action based upon Iowa Rule of Civil Procedure 49(f), a rule that exists in substance in most, if not all, jurisdictions of this country, including federal courts, and well-settled Iowa case law. Thus, the Petition for Writ of Certiorari should be denied.

I. CONSTITUTIONAL ARGUMENTS WERE NEITHER RAISED NOR ARGUED BELOW

Petitioners apparently argue that due process and equal protection rights under the Fourteenth Amendment of the U.S. Constitution require the issuance of a Writ of Certiorari. Supreme Court Rule 14 requires a Petition for Writ of Certiorari which seeks review of a state-court judgment to contain cites to the portions of the record where federal questions were raised.[2] Petitioners have failed to cite to any

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[2] Rule 14(g)(i) requires the Petition for Writ of Certiorari contain the following if review of a state court judgment is sought:

> ... specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of

portion of the record or rulings below where federal, or constitutional, questions were raised. This is because no constitutional issues, including due process and equal protection rights under the Fourteenth Amendment, were ever raised or argued in the Iowa District Court for Scott County, the Iowa Court of Appeals or the Iowa Supreme Court.

With very rare exceptions, in reviewing state court judgments under 28 U.S.C §1257, this Court will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision. *See Adams v. Robertson*, 520 U.S. 83, 117 S.Ct. 1028, 1029, 137 L.Ed.2d 203 (1997); *Webb v. Webb*, 451 U.S. 493, 101 S.Ct. 1889, 68 L.Ed.2d 392, 400 (1981)("Because petitioner failed to raise her federal claim in the state proceedings and the Georgia Supreme Court failed to rule on a federal issue, we conclude that we are without jurisdiction in this case. Accordingly, the suit is dismissed for want of jurisdiction."); *Monks v. New Jersey*, 398 U.S. 71, 71, 90 S.Ct. 1563, 26 L.Ed.2d 54 (1970)("The further claim advanced by petitioner's appointed counsel in this Court... has been raised for the first time upon this writ and the state courts have had no opportunity to pass upon it. Accordingly we conclude that the writ of certiorari should be dismissed as improvidently granted...."); *Cardinale v. Louisiana*, 394 U.S. 437, 439, 89 S.Ct. 1161, 22 L.Ed.2d 398 (1969) ("In view of the petitioner's admitted failure to raise the issue he presents here in any way below, the failure of

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certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

the state court to pass on this issue, the desirability of giving the State the first opportunity to apply its statute on an adequate record..., the writ is dismissed for want of jurisdiction."). The issues raised in the Petition for Writ of Certiorari were never raised, argued or addressed below by either the parties or the Iowa courts. The Petition should be denied accordingly.

II. THIS CASE DOES NOT INVOLVE ANY FEDERAL QUESTIONS REQUIRING REVIEW FROM THIS COURT

Notwithstanding Petitioners' failure to raise any constitutional arguments below, Petitioners have failed to raise any federal questions requiring review by this Court. Iowa Rule of Civil Procedure 49(f) is not in any manner unconstitutional. Most, if not all, jurisdictions in this country have a procedural rule similar, if not identical, to Iowa Rule of Civil Procedure 49(f). This includes the federal court system as Federal Rule of Civil Procedure 4(m) mandates dismissal for the failure to serve within 120 days unless "good cause" is demonstrated. See Fed. R. Civ. P. 4(m). Procedural rules which require service within a specified time have withstood constitutional challenge. *See, e.g., U.S. for Use and Benefit of DeLoss v. Kenner Gen. Contractors, Inc.*, 764 F.2d 707, 708 n.2 (9th Cir. 1985)("Rule 4(j)[now 4(m)] plainly meets the traditional rational basis test for judging an equal protection claim."; citation omitted); *Roberts v. Underwood*, 270 N.E.2d 547, 550 (Ill. App. Ct. 1971)("Plaintiffs also contend that the dismissal of their complaint violated their due process and equal protection rights under the Fourteenth Amendment of the United States Constitution. However,

plaintiffs cite no authority for this argument and we believe it is without merit."; citation omitted).

Petitioners argue that they were denied access to the courts. However, Petitioners were allowed to file their action not once but twice. It was Petitioners' failure to adhere to the rules of the court that resulted in dismissal, not any arbitrary application of the rules.

It is also argued that review is necessary because there "is a conflict between the states in applying procedural rules similar to Rule 49(f)." However, the application of procedural rules by other states, including Illinois, is irrelevant. Petitioners filed suit in Iowa. Iowa was the proper jurisdiction. Petitioners were bound by the Iowa Rules of Civil Procedure, not procedural rules found in other states.

Petitioners further argue that an alleged conflict in applying procedural rules results in uncertainty in the administration of justice. At the time Petitioners filed their action, the Iowa case law was clear that a failure to timely effectuate service, without adequate justification, would result in dismissal. *See Becker v. Becker*, 603 N.W.2d 627, 628 (Iowa 1999); *McCormick v. Meyer*, 582 N.W.2d 141, 145 (Iowa 1998)(reversing the district court's denial of motion to dismiss); *Mokhtarian v. GTE Midwest, Inc.*, 578 N.W.2d 666, 670 (Iowa 1998); *Henry v. Shober*, 566 N.W.2d 190, 193 (Iowa 1997); *Alvarez*, 560 N.W.2d at 591; *Dennis v. Christianson*, 482 N.W.2d 448, 451 (Iowa 1992); *Bean v. Midwest Battery & Metal, Inc.*, 449 N.W.2d 353, 356 (Iowa 1989); *Turnbull v. Horan*, 522 N.W.2d 860, 861 (Iowa Ct. App. 1994)(holding that the 126 day delay in service was presumptively abusive). Petitioners cannot now argue, in good

faith, that the consequences for failing to adhere to the requirements of Rule 49(f) were somehow uncertain.

Furthermore, Petitioners' "forum shopping" argument is irrelevant and a red herring. Petitioners filed suit in the only courts with proper jurisdiction; the Iowa state courts. Therefore, as stated earlier, they were bound by the Iowa Rules of Civil Procedure, including Rule 49(f). Speculation regarding possible adjudication in other states, including Illinois, is irrelevant as only Iowa, and not Illinois, had jurisdiction over this case.

Finally, Petitioners argue that the Iowa courts arbitrarily and capriciously dismissed their action. This is simply wrong. The Iowa courts relied on a long-standing rule of civil procedure and well-settled case law in dismissing Petitioners' action. *See* Iowa R. Civ. P. 49(f); *Mokhtarian*, 578 N.W.2d at 670; *Henry*, 566 N.W.2d at 193; *Alvarez*, 560 N.W.2d at 591; *Turnbull*, 522 N.W.2d at 861.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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